THE

MADRAS LAW JOURNAL.

II] OCTOBER [1945

THE BILL TO AMEND THE MADRAS HINDU RELIGIOUS ENDOWMENTS ACT.

This Bill has not unnaturally evoked great opposition from all quarters. Apart from the objections to the Bill on the merits, it is a serious objection to the Bill that it is intended to be passed by a legislative machinery not intended to be used for ordinary legislation, much less to a legislation of this character. Popular legislature is about to be convoked and it will soon be functioning. The amendments proposed to be enacted are such that only a people's legislature, fully conversant with the functions which these institutions perform and the social purposes they fulfil, can deal with satisfactorily. There is no immediate need or urgency to bring the proposed amendments into force, before the legislature meets after the forthcoming elections.

It is, in my opinion, an initial mistake to have included mutts and temples in the same legislation. They are wholly unlike in their nature and constitution, notwithstanding that they may be said to serve same or similar purposes. There is little in common between the head of a mutt and the trustee of a temple. Brought together in one Act, and conceived, as they are, as alike in their nature and purposes, successive amendments are made so as completely to assimilate them and then we wake up to the initial mistake and its consequences. This, as any one can see, is exactly parallel to the other error of dealing with zemindaris and inams in the same Act and the slow process of amending legislation assimilating them and showing up the disastrous consequences of the initial error.

Executive action needs judicial check. Its availability will keep the executive within the law. Recent experience has shown that the existence of writs of certiorari makes extensive resort to them unnecessary. If questions such as have had to go to the High Court in the past are to be withdrawn from it, there must be other equally efficient machinery to deal with those questions. Appeals to departments of government will not do. If the idea is that these matters should be dealt with by a tribunal consisting of Hindus only, either a bench of the High Court consisting of Hindu Judges or a special tribunal of quality should be constituted before the jurisdiction of the ordinary courts is taken away. As far as I can see at present, retention of the jurisdiction of the ordinary courts may still be necessary for many purposes. I will not now say more than that it may require careful examination by a popular legislature.

T. R. VENKATARAMA SASTRI.

THE BILL FURTHER TO AMEND THE MADRAS HINDU RELIGIOUS ENDOWMENTS ACT, 1926.

BY

K. BALASUBRAHMANIA AYYAR, B.A., B.L.

It is proposed to pass this Bill as an Act in exercise of the powers given to the Governor under section 93 of the Government of India Act. Under clause (4) of the said section, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the proclamation ceases to have effect. Now, the General Elections will be held soon and popular Ministries will begin to function early in the course of next year and the section 93 administration will necessarily cease. It is indeed, very strange that it is now proposed to enact a temporary measure like this which contains provisions of a very controversial nature and proposes changes of a far-reaching character, altering in some respects some of the main principles upon which the original legislation relating to Hindu Religious Endowments was passed. The Legislative Assembly has been formally dissolved and the whole country is busy with the coming elections with a view to elect fresh members for constituting the new Legislative Assembly. When the public mind is engrossed with the elections, it is unjust and improper to propose the enactment of a measure at this juncture which deals with a subject eminently fitted to be dealt with only after a deep consideration of the views of the representatives of public opinion and after a thorough discussion and examination of the changes involved in the proposed measure by the elected representatives of the people truly reflecting public opinion on a matter of vital concern to them. Even the time allotted for eliciting public opinion is very short. The new Bill has not been translated into the vernaculars.

A perusal of the Bill will convince any one that the changes proposed in the Bill are of a vital and far-reaching character and are calculated to evoke the strong criticism of the public. The report of the Venkataramana Rao Committee appointed for investigating the changes that may be necessary has not been published and the public are not in a position to know the reasons which call for the introduction of these amendments to the Act. Last year when Act V of 1944 was passed, it was stated to be a non-contentious measure and some proposals relating to audit which were likely to evoke controversy were dropped. The cardinal principle of the original Act was to deal with Mutts and excepted Temples in a manner quite different from other religious endowments. They were dealt with therefore under a separate chapter, Chapter VI. This difference was made by the Legislature only on account of a due regard to the nature and purpose of Mutts and excepted Temples. Mutts in Southern India are religious foundations established for the preservation and promotion of the tenets and branches of the various religious persuasions of the Hindu Community. They were founded by great teachers known as Acharyas who were also founders of those creeds of the Hindu Community such as the Advaita System, the Vaishnavite System consisting of the two sects Vadagalai and Thengalai, the Madhva System and the Saiva Siddhanta System and Saivaite faith. The Heads of these Mutts are generally ascetics who are men of great piety and learning and who command reverence from the members of the particular sects to which they belong and also from the general Hindu public. They have numerous disciplies among the members of the sect who owe spiritual allegiance to them. The law relating to these Mutts has been clearly laid down by important decisions of the Privy Council and the High Courts in India. The heads of these Mutts are not trustees in the strict sense of the Indian Trusts Act but they have large beneficial interest in the income of the properties of the Mutt and in the offerings given to them by their numerous disciples out of religious motives or spiritual allegiance to them. In the decision of the Madras High Court reported

in I.L.R. 27 Madras, 435, two very eminent Judges Sir S. Subrahmania Ayyar and Sir V. Bhashyam Ayyangar who were fully conversant with the religious usages of the Hindu Community observed as follows :

SUBRAHMANIA AYYAR, J.—" The Swamis were not mere employees or subordinates in the Institution, but heads thereof, whose duty it was to promote learning and further the interests of religion ; such heads, moreover, as ascetics not prone to be affected by motives incident to wordly life, requiring less restraint in dealing with the property than ordinary men. It followed therefore that the law gave them over what remained of the income after defraying the established charges of the institutions, a full power of disposition, while in respect of the *corpus* it treated the individuals composing the line of succession as in the position of tenants for life."

SIR V. BHASHYAM AYYANGAR, J.—" A large part of the income derived from the endowments of the Mutt as well as from the money offerings of its disciples and followers—which offerings as a rule are very considerable—is at the disposal of the head of the Mutt for the time being, which he is expected to spend, at his will and pleasure, on objects of religious charity and in the encouragement and promotion of religious learning. His obligation to devote the surplus income to such religious and charitable objects is one in the nature only of an imperfect or moral obligation resting in his conscience and regulated only by the force of public opinion and he is in no way, whether as a trustee or otherwise, accountable for it in law."

This decision was approved by the Judicial Committee in the judgment of Lord Shaw reported in I.L.R. 45 Madras 565, in which His Lordship observes as follows :

" The position of dharmakartha is not that of a shebait of a religious institution, or of the head of a mutt. These functionaries have a much higher right with larger power of disposal and administration, and they have a personal interest of a beneficial character . . . . . . In the very learned judgments delivered in *Vidyapurna Tirtha Swami* v. *Vidyanidhi Thirtha Swami*[1], the distinction between those functionaries is explained."

In the case of the excepted Temples also, the original Act had due regard to the fact that these Temples were practically founded by princes and noblemen and zamindars and other rich men and their management continued in the family of the original founders. In many cases of these excepted Temples the endowed properties are much less in proportion to the amounts contributed from time to time by the hereditary trustees themselves. Therefore it is that the original Act contented itself with the enactment of a general provision that the head of a Mutt or the Trustees of an excepted Temple should submit a budget showing the probable receipts and disbursements and a statement of the annual receipts and expenditure of the previous year. The Act gave power to the Board to settle a scheme only in cases of mismanagement or spending or alienating the properties for improper purposes or when there was a public demand for such a scheme. The new Amendment Bill, in utter violation of the principles of law enunciated above, on the other hand, proposes to introduce provisions for a regular daily control of these Mutts by the Board or the Assistant Commissioners, as the case may be, by a system of concurrent audits, annual audits and audits at shorter intervals by a staff of auditors appointed and controlled by the Board.

It is further proposed to give power to the Board to appoint Executive Officers who will share with the heads of these Mutts all the powers entrusted to them, power to surcharge the heads of the Mutts or the Trustees of excepted Temples on the basis of the audit reports without the safeguard of a scrutiny by Courts,

1. (1904) 14 M.L.J. 105 : I.L.R. 27 Mad. 435.

the only appeal against the decision of the Board being to the Provincial Government *i.e.*, from one executive head to a superior executive head and also to appoint interim heads of Mutts pending a scheme. Power is also given to the Board to make suggestions in regard to various items in the budget of these Mutts and the surplus. Though the Bill mentions suggestions, one can very well imagine that these coming from a body which has assumed so much control over these Mutts and excepted Temples can only be regarded as directions which must be strictly obeyed by the head of the Mutt or the trustee for fear otherwise of disfavour and other consequences. These bills fetter unduly the absolute powers of disposal and discretion of the heads of Mutts and impose galling restraints on their dignity and status. The restraint sought to be imposed on the powers and discretion of the heads of these Mutts is fundamentally opposed to the very spirit of these religious foundations and will greatly hamper their usefulness in the promotion and propagation of the religious tenets of the sect for which these Mutts have been founded. In fact, they are reduced to the position of subordinates of the Board and subject to their strict supervision. The Hindu community cannot, without its religious sentiment being severly affected, acquiesce in giving to the Board such a position of preeminence over all these heads of Mutts.

It will be clear from the resume that I have given of some of the provisions that the amendments proposed are of far-reaching character likely to evoke strong public criticism and deeply affecting the sentiment of the Hindu community. I am not suggesting that the administration of the Mutts in all cases has not been sometimes open to criticism or there have not been cases of mismanagement, but there is ample remedy under the present Religious Endowments Act itself for rectifying such mismanagements. The changes proposed are quite out of proportion to the needs of this object. On the other hand, they may prove harmful to the interests of these foundations and will impair the reverence with which the heads of the Mutts are held by the Hindu Community. As has been remarked by that eminent Judge, the late Justice Subrahmania Ayyar, in I.L.R. 27, Madras, 435, " even now the heads of some of these Mutts enjoy the esteem of the community and continue to serve more or less the purpose intended". But, it may be said without fear of contradiction or exaggeration that the heads of some of these Mutts of the present day are persons of great austerity, learning and nobility of character and command the reverence and spiritual allegiance of millions of the Hindu Community.

The Bill further discloses an unjustified distrust of the jurisdiction of the Civil Courts and substitutes ' applications ' for suits in many cases and debars appeals to Civil Courts and makes the orders of the Board final. To entrust the Executive with judicial functions without subjecting them to the scrutiny of Civil Courts is opposed to the principles of jurisprudence of all civilized countries.

It is hoped, therfore, that His Excellency will be pleased not to take the responsibility for passing such a measure which contravenes the just and sound principles of law and legislation and is in violation of the religious sentiments of the Hindu Community and will drop the Bill altogether.

SUMMARY OF ENGLISH CASES.

Re BLAKE, CLUTTERBUCK *v.* BRADFORD, (1945) 1 All.E.R. 1.

Solicitor's lien—Order for "costs" in favour of client against opposite party—"Costs" is property recovered through instrumentality of the solicitor who is entitled to a charging order over the "costs."

In a case where no question of conduct of the solicitor is involved it would require very exceptional circumstances to justify the Court in refusing to the solicitor the security in respect of the fruit of his labours. The hardship to other parties whose claims against the client may be postponed is not a sufficient ground for the Court to refuse to exercise its discretion to make a charging order in favour of the solicitor. An application by a solicitor for a charging order in a case where the judgment is merely a judgment for costs is perfectly competent. Even where the order was only for payment of costs to the client, the solicitor is entitled to a charge on those costs as being "property recovered" through his instrumentality.

Dallow v. *Gerrold*, 14 Q.B.D. 543, relied on. *Higgs* v. *Higgs*, 103 L.J. P. 44=150 L.T. 516, overruled.

No distinction can be suggested between an order for costs in an originating summons for construing a will and any other order for costs.

TRINIDAD LAKE ASPHALT OPERATING CO., LTD. *v.* INLAND REVENUE COMMISSIONERS, (1945) 1 All.E.R. 9 (P.C.).

Income-tax—Company—Dividend paid to foreign company by cancellation of credit due to such foreign company—If "transmission" of income—Liability to tax—Trinidad and Tobago Income-tax Ordinance (1940), section 30.

Where a company situate within the territorial jurisdiction of a colony sets off the dividend payable by it to a foreign company holding shares in it against the cost of goods supplied to that foreign company the transaction involves the "transmission" of the dividends to the non-resident share-holder company by the resident company with the consequence that it becomes liable as statutory agent of the foreign company for the amount of the income-tax.

ARISTOC LTD. *v.* RYSTA, LTD., AND ANOTHER, 1945 A.C. 68 (H.L.)=(1945) 1 All. E.R. 34.

Trade Marks—"Rysta" and "Aristoc"—Resemblance in sound—Trade mark in respect of repairs to stockings not of own manufacture—If can be registered—Trade Marks Act, 1938.

The appellants carried on business as manufacturers of and dealers in, women's stockings. They adopted the invented word "Aristoc" as a trade mark in the year 1923 and sold silk stockings of their manufacture throughout the United Kingdom. They were registered proprietors of some 24 registered trade marks consisting of the word "Aristoc" alone or having that word as the most important and prominent feature. The respondents carried on business since 1929, but they neither made nor sold any stockings. They were the owners of an undisclosed process for effecting invisible repairs to ladies' stockings by catching up the broken threads which caused ladders therein, and this they called "the "Rysta" process. In 1938, the respondents filed their application to register the word "Rysta" as a trade mark in respect of "stockings and re-weaving repairs effected thereto", the mark being used by them.

Held, (1) the word "Rysta" was likely to cause confusion having regard to the existence of the appellants' trade mark "Aristoc" which it so nearly resembled; (2) the use of the mark both on stockings intended to be manufactured as well as those repaired by the respondent will cause confusion and deception; (3) a registrable trade mark must be an indication of origin of the goods or their character or quality. The repair of stockings does not constitute a "connection in the course of trade" and a trade mark merely to indicate that stockings have been repaired by the person claiming registration of the trade mark, cannot be accepted for registration.

CUTLER *v.* WANDSWORTH STADIUM, LTD., (1945) 1 All.E.R. 103 (C.A.).

Undertaking in lieu of injunction—Variation—Procedure for obtaining.

The Court does not vary an undertaking given by a litigant. If a litigant has given an undertaking and desires to be released from that undertaking the application should be an application for release supported by evidence showing why the litigant should be released from the undertaking which he has given. Where an undertaking was given until the trial of the action or further order, an order of the court is necessary before the giver of the undertaking could be released. Litigants are not ordered to give these undertakings; they choose to give them, and an application to have an undertaking already given varied is wholly wrong in form. In an application to release a litigant from the undertaking given by him, it is not enough merely to rely on the fact of effluxion of time since the delivery of the statement of claim, nor is it enough to rely on the fact that the Court of Appeal in another action has taken the view that an injunction granted in that action (similar to the undertaking) was granted in too wide terms.

NORAH READ *v.* J. LYONS & CO., LTD., (1945) 1 All.E.R. 106 (C.A.).

Tort—Factory manufacturing high explosives—Bursting of shell—Injury to employee—Liability.

The manufacturer of explosives, which he knows to be dangerous, is under a duty to take a high degree of care, but if he fulfilled that duty, he would not be liable to any person using his premises for the consequences of an accidental explosion. The doctrine of strict liability laid down in *Rylands* v. *Fletcher*, (L.R. 3 Ch. 330) has no application to accidents incidental to the process of manufacture occurring to persons present on the premises whether as servants or as invitees or licensees. (American and English principles compared and fully discussed). (1944) 2 All.E.R. 98, reversed.

BRILLIANT *v.* MICHAELS, (1945) 1 All.E.R. 121 (Ch.D.).

Lease—Payment of advance for rent and cost of decoration of premises, tenancy agreement to be executed in due course and possession to be taken when premises became vacant—Agreement if enforceable—Rent agreed o higher than standard rent—Effect.

In return for an advance made by *B* the plaintiff the defendant gave a receipt as follows: "Received of *B* . . . . the sum of £ 5 deposit on flat no definite date for possession. £ 70 to be paid for decoration on completion of work at the rate of £ 3-5s. per week payable monthly in advance. Rent to be worked out according to monthly payments. Agreement to be signed by above tenant for three years. Agreement £ 2-2s. and stamp duty five shillings. Deposit to be returned if required." When the premises became vacant the defendant refused to let it to the plaintiff. In an action by the plaintiff for specific performance the defence raised was (1) that there was no firm contract ever made; (2) that if there was any agreement such agreement was not enforceable at law or equity by reason of the absence of any date or any sufficiently ascertained date for the commencement of the proposed term; and (3) that there was no sufficient memorandum in writing of the alleged contract to satisfy the Law of Property Act (1925), section 40.

Held, (1) that there was no final and binding contract of tenancy; there was only a contract to make a contract: (2) Assuming that there was a contract, a contract for a lease is enforceable notwithstanding that the commencement of the term may be expressed by reference to the happening of a contingency which is at the time uncertain provided that, at the time that the contract is sought to be enforced, the event has occurred and the contingency has happened. (3) If two parties agree that one is to pay and the other is to receive a rent in excess of the so-called standard rent neither that part of the bargain nor the whole contract is thereby rendered illegal. The fact is that in so far as the rent inserted or agreed upon is in excess of the standard rent the excess is not recoverable at law. It may not be right to grant a decree for specific performance with such a term as to rent in the agreement.

MARCO PRODUCTIONS, LTD. *v.* PAGOLA AND OTHERS, (1945) 1 All.E.R. 155 (K.B.D.).

Practice—Injunction—Contract of personal service—Enforcement—Restrictive covenants—Breach of—Proof that damage will result not essential for grant of injunction restraining breach.

The defendants entered into a contract with the plaintiff company, (theatrical producers) whereby "during the engagement or any time prior" in the company's theatrical productions at Oxford for the particular season, they would not appear "in any other entertainment . . . . without the written consent of the company." The defendants having contracted to appear for another theatrical producer at Manchester for the relevant season the plaintiff company asked for an injunction restraining the defendants from committing breach of the covenants.

Held, (1) Though the words in the covenant "or any time prior" were unnecessarily wide and unenforceable they were severable from the rest of the covenant which was valid. (2) It is not essential for the plaintiff to prove that damage will result by breach of the restrictive covenant and the defendants can be restrained by injunction. (3) The injunction would not have the effect of compelling the defendants to perform their positive obligations.

JONES *v.* LOWE, (1945) 1 All.E.R. 194 (K.B.D.).

Agent—Agreement to pay commission on introducing a purchaser—Agent when entitled to commission.

Where a person chooses to say "My commission will be payable on my introducing a purchaser" he must be construed as saying "My commission will be payable only when some one I introduce has purchased." Unless the person introduced has got so far as to signing a binding contract of purchase and sale the agent is not entitled to the commission. Nor has he a claim on *quantum meruit* in the absence of a stipulation to pay reasonable remuneration for the service.

ALDERSLADE *v.* HENDEN LAUNDRY, LTD., (1945) 1 All.E.R. 244 (C.A.).

Contract—Bailment—Laundry—Clause in contract limiting liability for lost or damaged article to 20 times the laundering charge—Applicability to loss of article by negligence—Duties of launderer.

The terms upon which a laundry company accepted its customers' goods included a clause "The maximum amount allowed for lost or damaged articles is 20 times the charge made for laundering." The company relied on this clause for the purpose of limiting its liability to the plaintiff in respect of certain hand-kerchiefs which he had sent to be laundered but which were not returned to him. The plaintiff contended that the clause was not applicable so as to exclude loss by negligence

in the absence of clear words referring to nelgligence as the loss cotntemplated may be due to mere breach of contract.

Held, the clause does avail to protect the laundry in respect of liability for negligence which must be assumed to be the cause of these hand-kerchiefs having disappeared. The obligation of the laundry is in addition to launder to take reasonable care of the articles before and after washing.

DAVIES *v.* COLLINS, (1945) 1 All.E.R. 247 (C.A.).

Contracts—Personal contract with dyer and cleaner—Clause limiting liability for loss to 10 times the charges—Article sent to a sub-contractor and lost—Liability.

The respondent entrusted some uniform to the appellant in order to have it cleaned and some small repairs done upon it. One of the conditions was :—"Whilst every care is exercised in cleaning and dyeing garments, all orders are accepted at owner's risk entirely and we are unable to hold ourselves responsible for damage, shrinkage, colour or defects developed in necessary handling. The proprietor's liability for loss is limited to an amount not exceeding 10 times the cost of cleaning." The appellant farmed out the contract to a sub-contractor and the uniform was lost and not returned.

Held, in the circumstances of the case the appellant must be construed to have undertaken to do the work on his own premises by his own servants and excludes any right on his part to get the work done by a sub-contractor. The loss in the case would not be covered by the limitation clause.

Re ALFRED FOUD, (1945) 1 All.E.R. 288 (Ch.D.).

Will—Construction—Bequest of residuary estate among voluntary hospitals—"Dispensary" is not a hospital.

The residuary estate was directed to be held in trust for division equally among the voluntary hospitals of Birmingham and Solihall. On a summons by a dispensary to include it as a participant in the trust.

Held, "Hospital" signifies a building where inpatients are received and a "dispensary" which gives occasional medical or surgical aid cannot be called a hospital.

NORMAN *v.* GOLDER (INSPECTOR OF TAXES), (1945) 1 All.E.R. 352 (C.A.).

Income-Tax—Medical expenses—Assessee not entitled to deductions for, as money laid out for purposes of the profession or vocation.

It is quite impossible to argue that a doctor's bills represent money wholly and exclusively laid out for the purposes of the trade, profession, employment or vocation of the patient. They are laid out in part for the advantage and benefit of the tax-payer as a living human being in the same way as for food or clothes. Nor can the tax-payer claim deduction for such expenses as wear and tear which refers only to plant or machinery and not to human beings.

SPOFFORTH AND PRINCE *v.* GOLDER (INSPECTOR OF TAXES), (1945) 1 All.E.R. 363 (K.B.D.).

Income-Tax—Firm of chartered accountants—Costs of defending partner in criminal proceedings—Deduction against profits not permissible.

Costs incurred in defending one of the partners of a firm of chartered accountants against criminal proceedings are not deductible from the profits of the firm as they could not be said to have been wholly and exclusively laid out or expended for the purposes of the firm's profession.

EDE (INSPECTOR OF TAXES) *v.* WILSON AND CORNWILL, (1945) 1 All.E.R. 367.

Income-Tax—Shares allotted to company officials as bonus at par value—Shares not saleable without directors' permission—Difference between par value and market value—Liability to tax as gain from office.

The assessees who were company officers were allotted bonus shares at par value subject to the condition that they should not sell them without obtaining the permission of the directors.

Held, that the difference between the par value of the shares and their market value must be treated as gain or profit arising from the office and as such was assessable to income-tax.

HENDERSON SHORT *v.* MCILGROM (INSPECTOR OF TAXES), (1945) 1 All.E.R. 391 (K.B.D.).

Income-Tax—Fee paid to employment agency for obtaining employment—Not deductible from emolument a money "wholly exclusively and necessarily" spent in the performance of the employment.

Money expended in order to obtain employment cannot be said to be spent in the performance of the duties attached to the employment and cannot be deducted from the emoluments of the employment for purposes of assessment to income-tax.

HOPWOOD *v.* MUIRSON, (1945) 1 All.E.R. 453 (C.A.).

Slander—Statement about testimonial given by solicitor in personal capacity—Not actionable per se.

A prospective tenant took a reference from *H*, a solicitor to the landlord. The landlord who had some ill-feeling towards *H* said: "You have got one [that is a reference] from that pimp *H*. It is quite worthless. His very calling as a solicitor makes him write whatever suits his client best. Damn it, he would sue his grandmother for *7s. 6d.*" In an action by the solicitor for slander,

Held, that the statement was a slander on the solicitor as a man and not in the way of his profession and it was therefore not actionable *per se*.

Re WARDEN AND HOTCHKISS, LTD., (1945) 1 All.E.R. 507 (C.A.)=1945 Ch. 270.

Company—Meeting—Service of notice on members with registered addresses in Africa—Not essential—Validity of resolution passed in the meeting.

Uthwatt, J., in (1945) 1 All.E.R. 268, held that the Companies Act leaves it to a company to frame its articles of association as it thinks proper and any inconvenience resulting from the provisions as to service of notices contained in particular articles are of the company's own making. The company cannot disregard the provision for service of notice on all the members on the ground of futility or inconvenience in serving members with registered addresses in Africa. A meeting without service of notice on such members is not duly convened and a resolution passed in such meeting cannot be confirmed by the Court. But the Court of appeal reversed the decision holding that service of notice on share-holders resident outside the United Kingdom was not essential and that the resolution was validly passed. The law as laid down in In re *Union Hill Silver Co., Ltd.*, (1870) 22 L.T. 400, which has been acted upon ought not to be upset.

D. & I. CATERERS, LTD. *v.* D'AJOU, (1945) 1 All.E.R. 563 (C.A.)=1945 K.B. 364.

Defamation—Slander—Imputation against limited company in the way of its business—Actionable without proof of special damage—No plea of justification—Cross-examination of plaintiff as to previous convictions—When permissible—Imputation of criminal offence—Company if can sue for slander.

Whether or not a limited company without proof of actual damage can sue for a defamatory spoken word imputing the commission of a criminal offence for which, if it were a natural person, it could be sentenced to a term of imprisonment, there is no doubt that a slander of a company in the way of its business is actionable without proof of special damage. A plaintiff in a defamation action can be cross-examined as to credit. But when there is no plea of justification and the defendant gave notice of intention to call evidence in mitigation of damages it is not open to the defence to give evidence or cross-examine the plaintiff as to previous convictions for other offences to get in facts in mitigation of damages.

B. O. MORRIS, LTD. *v.* PERROTT AND BOLTON, (1945) 1 All.E.R. 567 (C.A.).

Res Judicata—Judgment against one defendant without satisfaction—How far bar to fresh action against others.

Excepting in the case of a joint contract or relation of principal and agent, if the causes of action are different, a judgment without satisfaction against one defendant is no bar to an action against other persons liable, and this is so even if the plaintiff deliberately refrains from proceeding to execution on the first judgment. The test is not whether the subject matter of the contract is the same in both actions but whether the cause of action is identical in both. But the plaintiff cannot have double satisfaction and the decree in the second action may provide that the plaintiff is not to recover more than the claim in all.

CRICKLEWOOD PROPERTY AND INVESTMENT TRUST, LTD. *v.* LEIGHTON'S INVESTMENT TRUST, LTD., (1945) A.C. 221 (H.L.).

Lease—Frustration—How far discharges the contract of lease.

The lessees under a building lease for 99 years from 25th March, 1936, resisted a claim for rent on the ground of impossibility of building created by the restrictions imposed on work of that character and on acquisition of materials imposed by valid orders under the Defence Regulations.

Held, the orders requiring a suspension of building are not sufficient to strike at the root of the agreement. Frustration where it exists does not work suspension but brings the whole arrangement to an inevitable end forthwith. Having regard to the fact that the lease had more than 90 years to run and that the length of the interruption caused by emergency measures must presumably be a small fraction of the whole term, the interruption cannot be regarded as determining the lease. Accordingly the lessees liability for rent continued uninterrupted.

Per Viscount Simon, L.C. and Lord Wright:—The proposition that a lease can never be determined by events equivalent to frustration goes too far and cannot be accepted as an abstract proposition.

Per Lord Russell of Killowen and Lord Goddard: The doctrine of frustration can never apply to determine a lease.